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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996	)	CC Docket No. 97-11
	)	

COMMENTS OF U S WEST, INC.

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February 24, 1997

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COMMENTS OF U S WEST, INC.

I. SUMMARY

U S WEST, Inc. ("U S WEST") supports the Federal Communications Commission's ("Commission") recommended actions in this docket.[1] They are consistent with, and supportive of, the pro-competitive goals of the Telecommunications Act of 1996 for the Commission to reduce or eliminate unnecessary regulatory filings and approvals which, if they are left in place, will act as barriers and burdens to the development of competition in the local market.

The exemption in Section 402(b)(2)(A) from Section 214 regulation for extensions of lines applies to all domestic carriers, both dominant and non-dominant. U S WEST also supports the Commission's recommendation that it should forbear from requiring local exchange carriers ("LEC") subject to price cap regulation, LECs that are average schedule companies, and all non-dominant domestic local and long distance carriers from obtaining Section 214 authorization

[1] In the Matter of Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, CC Docket No. 97-11, Notice of Proposed Rulemaking, FCC 97-6, rel. Jan. 13, 1997 ("Notice").

for the construction, acquisition, or operation of new lines between domestic points, or for transmission over such lines.

U S WEST also supports the Commission's recommendation to apply the streamlined discontinuance procedures, which now apply only to non-dominant carriers, to dominant carriers as well.

II. LINE EXTENSIONS FOR ALL CARRIERS ARE EXEMPT FROM SECTION 214 REGULATION AND THE COMMISSION SHOULD FORBEAR FROM SECTION 214 REGULATION FOR NEW LINES CONSTRUCTED BY SELECTED CLASSES OF CARRIERS

A. Line Extensions By All Domestic Carriers Are Exempt Under The Act From Section 214 Regulation

Section 402(b)(2)(A) of the Telecommunications Act of 1996[2] provides that "[t]he Commission shall permit any common carrier to be exempt from the requirements of Section 214 of the Communications Act of 1934 for the extension of any line." This exemption applies to all carriers who may be subject to the requirements of Section 214.

The Commission tentatively concludes that "extension," as used in Section 402(b)(2)(A), means expansion by a carrier subject to the requirements of Section 214 of its service into geographic territory that it is eligible to serve but which its network does not currently reach.[3] This definition, and the attendant exemption in Section 402(b)(2)(A), support one of the goals of the Act: "[to] encourage carriers to

[2] 47 U.S.C. § 402(b)(2)(A).

[3] Notice ¶ 21.

expand their service areas into territory served by other carriers."[4] U S WEST agrees with the Commission's tentative conclusion.

B. Line Extensions By All International Carriers Should Be Subject To Section 214 Regulation On A Case-By-Case Basis

Within the international context, the Commission has tentatively concluded that international lines are not exempt from Section 214 regulation under Section 402(b)(2)(A).[5] U S WEST has no qualms with the Commission's conclusion that Section 402(b)(2)(A) is not applicable to international lines, especially given the adoption last year of streamlined procedures for international Section 214 authorizations.[6] Consistent with the Commission's declaration in the International Section 214 Streamlining Order, however, U S WEST urges the Commission to promptly initiate a proceeding to consider possible Section 214 international authorization requirements from which it can forbear pursuant to the authority granted in Section 401 of the 1996 Act.[7]

[4] Id. ¶ 23.

[5] Id. ¶ 33.

[6] In the Matter of Streamlining the International Section 214 Authorization Process and Tariff Requirements, Report and Order, 11 FCC Rcd. 12884 (1996) ("International Section 214 Streamlining Order").

[7] "In light of [the 1996 Act], we anticipate review of our international Section 214 authorization and tariffing procedures to identify new areas where additional streamlining may be appropriate. We agree with MCI, however, that such steps should be taken in the context of a new proceeding where we can make additional determinations about the state of competition in the international market and receive more public input. We will study the feasibility of the forbearance suggestions made in this proceeding and invite the public to make additional suggestions." Id. at 12917-18 ¶ 86.

C. New Lines Constructed By Some Classes Of Carriers Should Not Be Subject To Section 214 Regulation

In the Notice, the Commission observes that the exemption in Section 402(b)(2)(A) for extensions "applies to some, not all, of the carrier activities otherwise subject to Section 214 certification."[8]

The Commission concludes that activities which increase the capabilities of a carrier's existing network within an area it already serves would not be regarded as extensions, but rather would be regarded as "new lines," and the deployment of new lines would not be subject to the exemption in Section 402(b)(2)(A).[9]

Notwithstanding this conclusion, the Commission says that, consistent with the forbearance authority in Section 401 of the Act, it proposes to forbear from requiring LECs subject to price cap regulation, LECs that are average schedule companies, and all non-dominant domestic local and long distance carriers from obtaining Section 214 authorization "for the construction, acquisition, or operation of new lines between domestic points, or for transmission over such lines."[10] U S WEST supports this conclusion for the same reasons identified by the Commission.

With regard to domestic non-dominant carriers, it is clear that "market forces limit the ability of non-dominant carriers to recover the cost of unnecessary

[8] Notice ¶ 4.

[9] Id. ¶ 21.

[10] Id. ¶ 37.

facilities from telephone service ratepayers."[11] Therefore, forbearance from Section 214 regulation for these carriers for new lines is appropriate, because it is based upon sound economic theory.

With regard to domestic dominant price cap carriers, price cap regulation discourages overinvestment in facilities and encourages carriers to lower costs and increase productivity.[12] Section 214 regulation of these carriers' investments in facilities is not necessary to ensure that their charges are just and reasonable, because competitive forces or other regulatory constraints on prices already ensure that these classes of carriers have little economic incentive or ability to invest in wasteful or duplicative facilities.[13] In addition, forbearance will also reduce the regulatory costs and delay currently imposed on these carriers when they seek to introduce new services.[14] Finally, U S WEST agrees that forbearance with regard to new lines deployed by dominant domestic price cap carriers is in the public interest, because it will promote competitive market conditions and enhance competition among providers of telecommunications services.[15]

Forbearance from Section 214 regulation for some classes of carriers will also achieve an immediate reduction in the Commission's and the carriers' administrative burdens. In the Notice, the Commission tentatively concludes that

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[11] Id. ¶ 43.

[12] Id. ¶ 40.

[13] Id. ¶ 44.

[14] Id. ¶ 46.

[15] Id. ¶ 48.

LECs that are price cap companies or average schedule companies and all non-dominant domestic local and long distance carriers "would not be subject to any Section 214 reporting requirements under the Commission's rules."[16]

III. THE COMMISSION SHOULD EXPAND THE TYPES OF CARRIERS WHO MAY UTILIZE THE STREAMLINED DISCONTINUANCE PROCEDURES

In the Notice, the Commission says that the Act "does not alter the Commission's authority under Section 214(a) with respect to discontinuances or reductions in services."[17] Currently, streamlined discontinuance procedures set forth in Section 63.71 of the Commission's rules apply only to domestic non-dominant carriers.[18]

A. The Current Streamlined Discontinuance Procedures Are Straightforward

Under the current streamlined discontinuance procedures, non-dominant carriers who propose to reduce or discontinue service are required to notify all affected customers in writing unless the Commission authorizes another form of notice in advance.[19] Such carriers must also file with the Commission an application that includes a description and the date of the planned discontinuance, reduction, or impairment, the geographic areas of service affected, the dates and method of notice given to customers, and any other information the Commission

[16] Id. ¶ 64.

[17] Id. ¶ 70.

[18] 47 C.F.R. § 63.71.

[19] Id. § 63.71(a).

may require.[20] The application is automatically granted on the thirty-first day after its filing, unless the Commission notifies the carrier that the grant will not automatically be effective.[21]

B. Streamlined Discontinuance Procedures Should Apply To Both Dominant And Non-Dominant Carriers

In the Notice, the Commission tentatively concludes that the streamlined discontinuance procedures should apply to both dominant and non-dominant domestic carriers.[22] Rather than the thirty-day advanced notification for non-dominant carriers, the Commission proposes a sixty-day advanced notification period for dominant carriers[23] in conjunction with the universal service support mechanisms adopted by the Commission. U S WEST agrees with this tentative conclusion.

Based upon the positive and observable effects to date of the Commission's forbearance, in whole or in part, from enforcing Section 214 regulation with regard to discontinuances or reductions in services by non-dominant carriers, there is a persuasive argument that the streamlined discontinuance procedures should apply to dominant carriers as well. The Commission's current procedures demonstrate the value to the Commission, to carriers, and to consumers.

U S WEST agrees that the streamlined discontinuance procedures "strike a reasonable balance between protecting consumers and reducing unnecessary

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[20] Id. § 63.71(b).

[21] Id. 63.71(c).

[22] Notice ¶ 70.

barriers to exit for all carriers, whether dominant or non-dominant."[24] One of the goals sought to be achieved by the Act is competitive entry in the local market. And as local markets become increasingly competitive, many dominant carriers may find themselves under increasing pressure to reduce or eliminate service in unprofitable areas.[25] A corollary consideration is that regulatory requirements, such as obtaining Section 214 authorization, may create barriers to exit, and new entrants may therefore be reluctant to enter markets.[26] The Commission recognizes the need to promote competition by removing outdated barriers to entry in telecommunications markets[27] as well as unnecessary barriers to exit.[28] Adopting the streamlined discontinuance procedures for dominant carriers will support that goal of the Act.

State commissions play a vital role in matters involving service discontinuance. Because of the Act, they will play an even more pervasive role as they license new entrants to provide local service in competition with the incumbent LECs. They, perhaps more than this Commission, will be in a unique position to observe and react to changes in the market. They must closely monitor the entry of new providers to ensure that new entrants comply with the service requirements under state law. In tandem with that function, state commissions must also react

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[23] Id. ¶ 71.

[24] Id. ¶ 70.

[25] Id. ¶ 71.

[26] Id. ¶ 70.

[27] Id. ¶ 9.

[28] Id. ¶ 70.

to transfers of responsibility for providing service as well as discontinuance of services in selected markets in their states.

Because the Act requires state commissions to play a greater role in the evolution of the local markets in their states, it is appropriate that this Commission reduce unnecessary federal burdens and barriers for all carriers, whether dominant or non-dominant, and that this Commission should apply the streamlined discontinuance procedures, to all domestic common carriers.

C. The Commission Should Forbear From All 214 Regulation Where There Will Be No Interruption In Service

The Commission has previously granted U S WEST blanket Section 214 authorization for transfers of no more than 1,000 lines where a sale of exchanges is involved and where there will be no termination of service.[29] The Commission granted the blanket authorization for the following discontinuances: (1) the transfer involves no more than 1,000 lines; (2) there is no termination or interruption of existing services; (3) the relevant state commission does not object to the transfer; and (4) waiver of the definition of study area under Part 36 has been granted for all areas involved in the transfer under the Part 36 study area waiver standards.[30]

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[29] In the Matter of The Petition and Application of US West Communications For a Declaratory Ruling or, Alternatively, For Blanket Section 214 Authorization of Transfers to Unaffiliated Carriers of Less than 1,000 Access Lines Where all Existing Services Will Be Provided Without Interruption And Where the State Commission Has Approved the Transaction, Order and Authorization, 10 FCC Rcd. 6077 (Com. Car. Bur. 1995).

[30] Id. at 6081 ¶ 25.

This blanket authorization has proven to be workable and desirable, because it simplifies the transfer of exchanges where there is no interruption in service, it reduces the costs of regulatory filings for the parties, and it safeguards the interests of consumers because state commissions must approve such transfers.

This represents a useful model upon which the Commission could enlarge the scope of forbearance to apply to all sales of exchanges. That is, in all cases where there will be no termination or interruption of service because of a transfer of exchanges, and a state commission has approved the transfer, the Commission should forbear from all Section 214 discontinuance filing requirements.[31]

IV. CONCLUSION

The 1996 Act is designed to revolutionize the local and interLATA telecommunications markets by providing economic incentives for providers in one of these markets to enter and compete with providers in the other market. It embraces private business negotiation between parties and it adopts standards and safeguards based upon commercially reasonable practices in the marketplace.

[31] With the two prerequisites (no disruption of service and state approval) incorporated into this proposal, a limitation on the number of lines being transferred is unnecessary.

Therefore, it is appropriate that this Commission eliminate regulatory barriers and burdens for both incumbent providers as well as new entrants.

Respectfully submitted,

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February 24, 1997

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 24th day of February, 1997, I have caused a copy of the foregoing **COMMENTS OF U S WEST, INC.** to be served via hand-delivery upon the persons listed on the attached service list.

Kelseau Powe, Jr.

(CC9711.COS/JT/lh)

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